IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1906 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF PRABHULAL VACHHRAJ

Versus

HEIRS OF ZAVERCHAND K VORA

Appearance:

MR KJ KAKKAD for Petitioners

MR AG VYAS for Respondents

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 19/06/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, at the instance of the original plaintiffs - landlords, who had sued the respondents - tenants for a decree of eviction on various grounds.

2. The petitioners - landlords had sued the respondents - tenants for a decree of eviction on the ground of nuisance within the meaning of section 13[1][c] of the Bombay Rent Act, on the ground that the tenants were in arrears of rent for more than six months, that the tenants had changed the user of the premises within the meaning of section 13[1][k] of the Rent Act, and that the landlords required the premises for their personal and bonafide requirements.

3. The trial Court, after appreciating the evidentiary material on record, dismissed the suit of the landlords on all the four grounds.

4. The landlords therefore preferred an appeal u/s 29 of the Bombay Rent Act. It may be noted at this stage that during the course of appeal, the grounds as to arrears of rent does not appear to have been argued or pressed, and is therefore not reflected in the impugned judgement. In this context, learned counsel for the petitioners - landlords states that he makes no grievance.

4.1 It is also required to be noted that the grounds of eviction on the ground of change of user and on the ground of personal bonafide requirements of the landlords, were also not pressed before the lower appellate Court, as noted in paragraph 8 of the lower appellate Court's judgement. Therefore, the lower appellate Court was required to deal with only the ground of nuisance within the meaning of section 13[1][c] of the Bombay Rent Act. After appreciating the evidentiary material on record, the lower appellate Court agreed with the findings recorded by the trial Court, and found that the landlords had failed to make out a case of nuisance against the tenants, and were therefore not entitled to a decree of eviction, and consequently dismissed the appeal.

5. It is under such circumstances that the landlords have preferred this appeal challenging the concurrent findings of fact recorded by the two Courts below on the aspect of nuisance.

6. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC

3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

7. Even on re-appreciation of evidentiary material on record with the assistance of the learned counsel for the petitioners - landlords, I am satisfied that a different view on the facts of the case is just not possible.

8. Only a few salient features require to be noted.

8.1 According to the landlords, the tenants are creating a nuisance by storing large boxes of medicines in the common passage, and thereby creating an obstruction to the landlords. Firstly, it is not in dispute that the respondents No.1 and 2 are both Medical Representatives of Pharmaceutical Concerns, and it goes without saying that they are in service. It is not even the case of the landlords or in any case, there is not even an iota of evidence to indicate or suggest that they are doing business in the sale of medicines on the suit premises. As employees of Pharmaceutical Concerns and as Medical Representatives, it is but natural that they would have a certain stock of medicines under their charge, which they would be required to carry in their briefcases to doctors and medical institutions for the purpose of introduction, demonstration and/or booking orders. It is common knowledge that Medical Representatives carry samples in their briefcases, include other literature and material of technical nature for promoting the sale of medicines of a particular concern, and also for booking orders. The only stock of medicines which Medical Representatives would have with them is the quantity which they would handout by way of "free samples" to doctors and medical institutions for the purpose of promotion and earning goodwill. It goes without saying that the stock of such "free samples" entrusted to a Medical Representative would not be so large or in such great abundance so as to block the

entire passage and prevent the landlords from using the passage.

8.2 The ground of nuisance is also sought to be made out on the basis of a number of instances and/or illustrations.

8.3 It was sought to be contended by plaintiff No.5 in her deposition that the defendants are raising quarrels with her and they are locking the Deli at night. However, the plaintiff No.5 has herself admitted that, at that point of time, there was no dispute of locking of Deli between the parties because each party maintains one set of keys. The lower appellate Court is therefore justified in concluding that there cannot be any dispute on this ground.

8.4 It was then sought to be contended that the defendants are throwing the boxes of medicines upon the passage of the Deli, to the extent where the floor is damaged. The lower appellate Court has rightly rejected this contention for the simple reason that, firstly there is no evidence of damage to the floor of the passage. Even otherwise, the boxes of medicines are not of such weight which would damage the floor even if thrown carelessly in the passage. On the contrary, if the defendants were to carelessly and indiscriminately throw around boxes of medicines and medications, instead of damaging the flooring, they would only damage the contents of such boxes. Admittedly, no panchnama has been prepared by any Court Commissioner to indicate as to what portion of the floor of the passage is damaged, and if so, whether the damage is as a result of such indiscriminate throwing of the boxes of samples of medicines.

8.5 It was then sought to be suggested that one of the means of creating nuisance resorted to by the tenants was by damaging the sewage pipe which descends vertically from the first floor. It was sought to be suggested that the defendants have damaged the sewage pipe as a result of which sewage water is passing in the premises of the plaintiffs. The lower appellate Court has found that admittedly the plaintiffs reside on the first floor and the defendants are occupying the ground floor. If the sewage pipe had been damaged by the tenants, the dirty water would undoubtedly have descended to the ground floor, that is to say, on the ota of the premises occupied by the defendants themselves. The lower appellate Court has rightly found that no person of even reasonable common sense would do such an act whereby he

would invite the passage of sewage water upon his own premises. In other words, such a conduct or behaviour on part of the defendants would be contrary to human nature and not in the natural course of events.

8.6 Much grievance has been made upon the contention of the landlords that the defendants have prevented the landlords from making a garden in the premises "which are in possession of the defendants". The lower appellate Court has found on the evidence on record, that the garden was once upon a time in existence in the year 1973-74, but it is plain from the evidence of plaintiff No.5, that at present there is no garden whatsoever, and that entire Fali land has been plastered with cement. It is certainly not the case of the landlords that they wanted to break open the cement plaster and to establish a garden on that specific area.

8.7 It was further contended that the defendants were continuously raising quarrels with the landlords, and this has resulted in the filing of several criminal complaints by the defendants against the plaintiffs. No doubt, there is evidence to indicate the filing of such complaints including summons and copies of the criminal complaints. The lower appellate Court has found that the defendant No.5 has filed a complaint for the offence punishable u/s 323, 504 and 506 of IPC. However, from this evidence, it is obvious that these complaints have been filed after the presentation of the suit, possibly by way of a counter blast. In any case, to resort to what may appear to a party to be a legal remedy, even if it causes inconvenience to the other side, would not amount to a nuisance within the meaning of the Rent Act. Even otherwise, there is evidence on record that various civil litigations are going on between the parties, and the plaintiffs themselves have filed various suits against the defendants in respect of the suit premises on a number of grounds. Thus, when the parties are on inimical terms which each other, it should be no surprise that they should resort to litigation under the smallest pretext. Under these circumstances, it is also natural that there may be exchange of words on some occasion. That by itself would not amount to nuisance or annoyance and is not sufficient to establish a ground of eviction within the meaning of section 13[1][c] of the Rent Act.

8.8 It is also sought to be urged before me that the defendants - tenants have also created further harassments for the landlords by fabricating false receipts and by utilizing the same as evidence in the instant suit before the trial Court. Be that as it may,

I am not inclined to accept this as a fresh ground which can be urged in the present revision, since this factual contention was not urged or agitated before the lower appellate Court. Had this ground been taken before the lower appellate Court, we would have the benefit of findings of fact recorded by the lower appellate court, and the reasons therefor.

9. In the premises aforesaid, I am of the opinion that the findings of fact recorded by the two Courts below do not justify any interference by way of the present revision. The same is therefore dismissed. Rule is discharged with costs.

*****

parmar*